UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1993/SR.32
26 February 1993

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Forty-ninth session

SUMMARY RECORD OF THE 32nd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 22 February 1993, at 7 p.m.

Chairman: Mr. GARRETON (Chile)

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GE.93-11054 (E)

The meeting was called to order at 7.15 p.m.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (agenda item 10) (continued)

(E/CN.4/1993/4, 20-28, 86; E/CN.4/1993/NGO/7, 9, 10, 18-20, 22; E/CN.4/1992/17 and Add.1, 18 and Add.1, 20; E/CN.4/Sub.2/1992/9 and Add.1, 17, 19, 22, 23/Rev.1, 24 and Add.1-3; A/47/662; A/RES/47/109)

1. Ms. WHITTOME (Lawyers Committee for Human Rights) said that her organization was deeply concerned about the failure of States to conform to the relevant international standards, the denial of adequate access to lawyers, the intimidation of lawyers and the use of coercion to obtain confessions.

2. In Colombia, since the inauguration of a new Constitution and the declaration of the end of the state of siege in July 1991, the Government had introduced virtually all the presidential decrees issued under the state of siege concerning the legal system, acts of terrorism and the drug traffic as permanent legislation. Since the renewed declaration of a state of exception in November 1992, it had broadened the scope of the jurisdiction of the regional courts, placed greater powers in the hands of the military to conduct police functions in certain regions and further restricted the rights of persons accused of terrorism and drug trafficking. There were numerous reports of the torture and extrajudicial execution of persons detained by the military for alleged guerrilla activities. The Lawyers Committee for Human Rights shared the concern of many Colombian human rights groups that to confer additional police power on the military in terrorism and narcotics cases was an invitation to further abuse.

3. Although Colombian law required the presence of civilian authorities when a suspect made a formal statement to the military in their capacity as investigative police, in practice, the civilian authorities were frequently not notified of the detention until the interrogation had been completed. Both public prosecutors and judges had expressed fears of reprisals if they reported military abuses of prisoners. The Government had also declared states of exception to prevent the parole of persons jailed for longer than the periods provided for by law during a criminal investigation. Following the renewal of that state of exception in July 1992, a decree had been issued allowing prosecutors to block the release of numerous persons detained in the special regional courts, and although the state of exception had been lifted six days later, the special restrictions remained in effect.

4. In Tunisia, thousands of supporters of the banned Islamist political party En-Nahda had been subjected to unfair trial. Detainees were frequently held without access to a lawyer or family members for longer than the 10 days permitted by law. Dates of detention had been fabricated by the police to make the period of incommunicado detention appear compatible with legal limits. Torture and ill-treatment of detainees had been widespread and well documented, particularly in 1991 and early 1992 when the Government was seeking to coerce detainees into confession to substantiate the Government's allegations of the existence of a wide-ranging plot to overthrow it.

5. The mass trials of 279 Islamist sympathizers in July and August 1992 had been unfair: allegations of abuse of garde à vue detention were not addressed by the military tribunals; many of the defendants in the trial complained that they had been tortured; the procedures for investigations of allegations of torture were not rigorous; in some cases medical examinations requested by detainees' families or lawyers were not carried out and some defence lawyers were given no access to their clients before the trial and inadequate access during it. The clamp down on En-Nahda had been accompanied by a significant degree of intimidation of lawyers active in the defence of Islamist clients.

6. In Northern Ireland, members of a fact-finding mission sent by the Lawyers Committee for Human Rights had been disturbed by the claims of the many lawyers and detainees whom they had met that police officers regularly threatened and abused lawyers, indirectly, during detention of their clients under emergency legislation. The growing body of evidence suggesting official collusion in the murder of Patrick Finucane, one of the most successful defence lawyers in Northern Ireland, was of particular concern. The Lawyers Committee for Human Rights was troubled by the apparent lack of thoroughness in the police investigation, and by the unwillingness of the authorities to institute an independent public inquiry into the killing despite a call for an inquiry made by Mrs. Palley in the Sub-Commission on Prevention of Discrimination and Protection of Minorities in August 1992, following concerns expressed by Mr. Joinet in his report on the independence of the judiciary and practising lawyers (E/CN.4/Sub.2/1992/25).

7. The Lawyers Committee for Human Rights mission had also found that in a number of respects the United Kingdom Government was failing to comply with the United Nations Basic Principles on the Role of Lawyers. In particular, through legislation, it had significantly limited the rights of detainees to obtain confidential legal advice. Furthermore, the Government had refused to institute effective safeguards to prevent threats against lawyers and abuse of detainees, or to introduce audio and video recording of their interrogation. In Northern Ireland detainees held under emergency legislation did not have the right to have their lawyers present during questioning. While the recent appointment of an Independent Commissioner for Holding Centres to supervise existing safeguards for the protection of detainees, was a positive development, it failed to address the heart of the problem. Her organization was also concerned about the notice of derogation, entered by the United Kingdom, from the International Covenant on Civil and Political Rights and the European Convention on Human Rights, enabling detainees to be held without charge for up to seven days.

8. The Lawyers Committee for Human Rights called on the Commission to urge all States to ensure that international standards guaranteeing the right to a fair trial, the independence and impartiality of judges and lawyers, and the physical integrity of detainees, were respected in all circumstances.

9. Mr. FORSTER (International Working Group for Indigenous Affairs) reminded the Commission of the total violation of the rights of the population of Bougainville due to the armed conflict between forces of the Bougainville Republican Army and the Papua New Guinea military, the denial of the basic human rights. Recent reports told of summary executions, arbitrary detention with torture or degradation and the rape of both women and young boys by Papua New Guinea defence forces, as well as reports of prisoners being dropped alive from helicopters. The victims, as always, were the innocent and not always those who had taken up arms. The Interim Government of Bougainville had made it clear that it deplored all forms of violence and sought only a democratic peace, although it recognized that the Bougainville Republican Army was protecting it as well as the right to self-determination of the people.

10. For some months in 1992 a small percentage of the civilian population had elected to encourage the Papua New Guinea military to enter their villages to deliver its promise of meeting basic needs and permit them to exercise their human rights by opening the schools and allowing them to trade with the outside world. As time passed, they had discovered that Papua New Guinea only intended to use them as another weapon against the Bougainville Republican Army. Fighting had again broken out in those areas.

11. In the past, the issue of humanitarian intervention had been a taboo subject in the Commission on Human Rights; it was now in fact, seen to be constructive in defending and promoting human rights. His organization asked the Commission not to extinguish the ray of hope which was all that remained to the oppressed Bougainvillians. Something needed to be done to bring Papua New Guinea to task for the crime, which undoubtedly fell within the definition of genocide, in which it was engaged.

12. Constitutional lawyers who had studied the situation in Bougainville pointed out that the occupation and military blockade of the island violated international law as well as the State Constitution. Under the Constitution, there had been no declared state of emergency on Bougainville since the beginning of 1990. It was inconceivable that a Government could lawfully isolate part of a country so as to cut off medical supplies and allow the sick, the aged, the infirm and children to die for lack of medical attention.

13. There had been no parliamentary approval for putting the defence force on a war footing. At all times, the military was supposed to be under the control of the democratically elected Government. The situation had become highly questionable on Bougainville. In essence it was one of a war being fought by two rebel elements - the Bougainville Republican Army fighting for the right to self-determination and the Papua New Guinea defence force fighting to gain a militarily imposed political system. As there was no access for the press, the only reports on the situation came through the radio to his organization's humanitarian office in the Solomon Islands, which Papua New Guinea was endeavouring to close down.

14. There was no rule of law under the military. Suspicion on their part against any member of the general public led not to trial but to torture in detention without trial, or more frequently instant death.

15. What was happening on Bougainville was not acceptable. Papua New Guinea must be encouraged to lift the curtain on Bougainville, and experts should be allowed to report and advise on the spiral of destruction of the basic rights, fundamental freedoms and territory of the people of Bougainville.

16. Ms. PORTER (International League for Human Rights) said that her organization was extremely concerned at a number of aspects of the legal system and administrative and judicial practices of the People's Republic of China in so far as they represented derogations from basic principles embodied in the Universal Declaration of Human Rights and other relevant conventions and resolutions to which the People's Republic of China was party. They included: the widespread practice of administrative detention in the form of "sheltering for investigation" and other methods based on unpublished interim legislation - a practice which derogated from the formally promulgated legislation of the People's Republic of China and frequently resulted in individuals being held incommunicado for lengthy periods without access to counsel or family members; the continuing use of "re-education through labour" to confine individuals to labour camps for several years on the basis of a closed proceeding controlled by the police authorities without trial or procedural safeguards of any kind; the frequent violation of legal limitations on the period of pre-trial detention, resulting in lengthy periods of confinement without the benefit of legal counsel during the police and procuratorial investigation stages of a criminal case; the severely inadequate provisions of the law with respect to access of criminal suspects to counsel, which allowed counsel to enter a case only on the eve of the trial after a lengthy pre-trial investigation during which the suspect was held in police custody; and the widespread use of torture in places of detention, labour camps and prisons, reliable reports of which continued to be received in alarming numbers and against which the legal system of the People's Republic of China provided severely inadequate safeguards.

17. The International League for Human Rights urged the Government of the People's Republic of China to make use of the advisory services and technical assistance programme in the field of human rights to seek rapid improvements in the practices listed and urged the Government to afford the fullest cooperation to the special rapporteurs and working groups in that respect.

18. Mr. BLAKE (Service Justice and Peace in Latin America) said that the Frente Ecuatoriano de Derechos Humanos had reported 600 cases of human rights violations in Ecuador in the first 11 months of 1992. They included 221 arbitrary detentions, 29 murders and 93 cases of torture; a result of the detentions had been the enforced disappearance of a number of persons whom he named. In particular, the government agents responsible for the disappearance of the Restrepo-Arismendi brothers in 1988, which had been investigated by an international commission, were still unpunished.

19. In Colombia, political repression had taken a strange turn in view of the links between drug-trafficking, State terrorism and the internal armed conflict, giving rise to dirty war situations such as the assassination

of 67 members of the police by drug traffickers, to which the police had riposted by attacking youths from slums, accusing them of having committed the murders of the police or of belonging to the people's militias. According to statistics, there had been 500 political murders in 1991 and 1,135 in 1992, proving that impunity led to more numerous and more serious violations of human rights.

20. In Honduras, the Government had been incapable of keeping military abuses under control; the armed forces had taken over the operation of State functions, such as the police, the immigration services and telecommunications. There had been 143 cases of torture, five political assassinations and 314 illegal detentions in 1992. The Government showed no desire to improve the situation and those who violated human rights went unpunished.

21. In Peru, thus far no investigations had been carried out into the 70 cases of torture identified in 1992 by human rights bodies. One hundred and fourteen extrajudicial executions had taken place; that number included 50 persons taken away by the police and later found to have been murdered.

22. In Panama, the Government kept former officials of the previous regime under arbitrary detention without respecting their right to legal guarantees.

23. In the case of Sri Lanka, impunity had become the prime instigator of the phenomenon of enforced disappearances. The disappearance of 31 students in Embilipithia was an example of the authorities' tolerance of the phenomenon and encouragement of impunity. The Government of Sri Lanka had so far refused to pay adequate compensation to the relatives of missing persons or persons killed by government-sponsored groups.

24. In the Western Sahara, the Moroccan security forces continued to have recourse to torture and enforced disappearances to thwart the struggles of the Saharan people. Three hundred new cases had been added to the long list of tortured and missing persons recorded in 1992. The impunity with which the Moroccan forces could act encouraged violations of the most elementary human rights.

25. The Commission had before it a draft resolution submitted by the Sub-Commission on the question of the impunity of perpetrators of violations of human rights. The resolution pointed out that the increasingly widespread practice of impunity for perpetrators of violations of human rights in various regions of the world was a fundamental obstacle to the observance of human rights. His organization believed that the United Nations needed to set up machinery to monitor and combat the phenomenon of impunity, with the participation of States, independent experts, intergovernmental organizations and non-governmental organizations. It therefore requested the Commission to adopt the draft resolution submitted by the Sub-Commission and to authorize Mr. Guissé and Mr. Joinet to draft a study on the impunity of perpetrators of violations of human rights. In conclusion, he pointed out that the extensive documentation on the phenomenon of impunity assembled by NGOs over many years and which was at the disposal of the Centre for Human Rights would be an invaluable input for that work.

26. Ms. BUDIARDJO (Liberation) said that on the occasion of the Asia-Pacific Workshop on Human Rights, jointly hosted in Jakarta on 26-28 January 1993 by the United Nations Centre for Human Rights and the Indonesian Government, events in East Java had given the lie to that Government's well-publicized statement of high-sounding principles. Farmers prevented by the armed forces from planting corn on land taken over for manoeuvres without proper consultation or decent compensation had been maltreated and intimidated by the troops; students protesting on their behalf had fared even worse at the hands of the police. The so-called "security approach" thus seemed to signify to the authorities the protection of the State against people defending their right to a decent livelihood. The armed forces had also been intervening in the affairs of the country's largest Protestant church - a serious case of interference which threatened the very principle of religious freedom.

27. According to human rights monitors, there were 596 clearly identifiable political prisoners in Indonesia: the actual figure was certainly far higher. More than half were in custody because of their involvement in independence struggles in East Timor, West Papua and Aceh. Some had been in prison for a quarter of a century. Muslim activists sentenced for alleged subversion constituted the largest single group of such prisoners. Despite appeals from Indonesian lawyers and a recommendation by the United Nations Special Rapporteur on torture (endorsed by the Commission on Human Rights at its forty-eighth session), there were no signs of imminent repeal of the Anti-Subversion Law, which had been acknowledged by the authorities to be very important for the State ideology, according to which liberal views, the expression of dissidence and even the activities of human rights monitors were all deemed to be threateningly extremist.

28. Almost one and a half million so-called "ex-communists", people never charged with any offence but held in detention or subjected to forced labour for many years, remained social pariahs even after their release. One of them, Indonesia's foremost writer, Pramoedya Ananta Toer, had, in December 1992, stated the following: "Twenty-seven years is long enough for the rulers of the State of the Republic of Indonesia or of any State to restore the rights of human beings to those who have suffered their theft, whether they be moral or material rights". Liberation endorsed those courageous words, and called on the Commission to examine the human rights situation in Indonesia in all its ramifications, to take speedy action to alleviate the sufferings of the victims and enable Indonesian human rights monitors to work for change.

29. Mr. PINACUE (Grand Council of the Crees) spoke of the persecution of indigenous peoples - the most catastrophic manifestations of which were to be found in the Americas - as "collective torture" of the basest kind and the very negation of human reason. The only bulwark against that monstrosity lay in dialogue between countries, humanized governance and the construction of an intellectual system in which the notion of humankind's essential unity underpinned the four pillars of "land", "culture", "autonomy" and "solidarity".

30. Recalling that the Commission had, only a few days earlier, heard of the appalling plight that had led Inuit children in Canada to suicide as an alternative to freedom, and referring to other particularly dramatic and

criminal instances of human rights violations in his own country, Colombia, he suggested that there could be no more fitting occasion than the International Year for the World's Indigenous People to draft a solemn Declaration calling attention to the indignities inflicted on those people, and urging action to correct the flagrant injustices which they continued to suffer. Needless to say, the working party set up to prepare the draft should consult extensively with those most directly concerned, namely the victims.

31. The Right Reverend Monsignor CONEDERA (Pax Romana) said that the process of constructing a civilized system of life in Guatemala during the past year had been erratic and that the quest for peace agreements and the attempts to reintegrate populations uprooted by the armed conflict required greater effort and support.

32. The opportunity had now arisen to discuss an essential issue: the conditions for building peace, the profile of a democratic society, a minimum human rights code and policies for constituting a nation with a broad range of ethnic diversity. That opportunity might well be lost because the structure of the institutional system was still weak and the participation of the population very uncertain.

33. It was regrettable that the attitudes of those with high levels of responsibility in the State were not such as would contribute to improving the institutional framework and context for participation. Serious efforts to discuss the course which should be taken and the role of the leaders were taken as personal attacks or subversion. Freedom of expression was seriously compromised and journalists and writers were subjected to attacks, threats and coercion. Some had been forced into exile. Pax Romania itself had been stigmatized in attacks by senior government officials.

34. A number of the reports on human rights developments in Guatemala showed concern at the persistence of physical and psychological violations and a general environment of insecurity. Some, basing themselves on the reduction in the number of violations, argued that there had been progress. The report of the Commission's Independent Expert (E/CN.4/1993/10) showed that any assessment was a complex business. The set of variables involved included the continued existence of armed conflict, the presence of civilian populations in conflict areas, the coercion of peasants to form civilian patrols and the arbitrary criterion concerning conscription, including that of minors, the abuses of civilians committed by insurgents in conflict zones and the attacks on non-military objectives, the lack of credibility of the legal system, the predominant role of the armed forces and its specialized units and the inadequate application of the laws, machinery and institutions that exist in a civilized society.

35. Pax Romana had recorded in 1992, 1,074 cases of violations of life, freedom and physical integrity, including 204 extrajudicial executions, 213 illegal detentions, 11 enforced disappearances, 1 case of torture and 64 attacks. Those figures were merely the tip of the iceberg. While there had been no great progress in respect for fundamental rights, there was a positive aspect in the form of a little more supervision and investigation and the documentation of cases was becoming more feasible.

36. The raison d'etre of the Commission and the existence of independent human rights bodies was to render impossible the task of those who believed that barbarism was the only way to resolve problems. A high degree of humanity, conscientiousness and professionalism were required in the tasks of reporting and of restoring the applicability of the law.

37. The challenge was to build up credible institutions and machinery in which the civil authorities should exercise supremacy, to reintegrate the populations uprooted by the armed conflict and to reconcile society as a whole.

38. The Office of the Public Prosecutor had lost the criterion of independence which had made it a suitable instrument for the task of regulating relations between the State and society. Recent reports revealed its deviation from the straight line of its duty and an apparent intention to boycott by elements linked with the security forces. The balance of power had been affected by the loss of credibility of the Constitutional Court which had derogated rights acquired by the workers, and had been unable to dispel the lenience and corruption of which many complained. It would be edifying to use the case of Myrna Mack, for example, which was a focus of international attention, to help to remove the barrier of impunity which was oppressing society. The legal system urgently needed to be strengthened and modernized so as to be able to face the challenge of progressing towards peace and democracy.

39. He hoped that in 1994 he would be able to announce that the legal system had regained its credibility and was no longer the object of superficial or manipulative treatment, and that peasants would be able to feel that they belonged to a society where they were listened to, taken into consideration and received justice.

40. Nearly 2,700 refugees had returned to Guatemala from Mexico in January 1993 under agreements between the Government and refugee representatives. Neither the negotiations nor the return had been easy. Those returnees who decided to settle north of El Quiché were faced with the double dilemma of their material survival in an isolated area with few resources and their physical and psychological protection in an area where armed clashes frequently occurred. Those were the extreme conditions which many Guatemalans had to face in order to survive. The presence of local and international humanitarian development bodies would be a decisive factor in helping those communities to find viable options for peace and development.

41. Nearly 80 per cent of Guatemalans were denied the right to employment and access to basic goods and services. Reforms of the State apparatus should focus on making it an efficient initiator of social progress, by increasing the quality and quantity of budget execution, decentralizing institutions and their staff and delegating decisions. None of those programmes had materialized to date. The priorities would seem to be different - reorganizing public finance and maintaining monetary and credit goals at the cost of the well-being of the population; that could only cause an alarming deterioration in conditions of life in Guatemala.

42. He hoped that, after studying the complex situation in Guatemala, the Commission would request the Secretary-General to appoint a representative to study, investigate, make recommendations and support the effective implementation of human rights in Guatemala.

43. Mr. KIRKYACHARIAN (Movement against Racism and for Friendship among Peoples) noted with considerable satisfaction a number of positive changes in the human rights situation in Morocco, singling out for attention the official acknowledgement of the existence and the opening of the Tazmamat prison and the liberation of its inmates, the freeing of various groups of political prisoners held elsewhere and of more than 200 detainees in the Western Sahara, and the release after some 20 years of Mme Oufkir and her 6 children.

44. With the approach of the World Conference on Human Rights, however, renewed concern must be voiced about persistent and flagrant violations, notably the silence surrounding the whereabouts of numerous long-term civilian and military prisoners condemned in 1972, and the continued holding in various places of detention of several hundred prisoners of opinion or militant trade-unionists - one of them for no less than 23 years.

45. Freedom of movement in and outside Morocco remained arbitrarily limited, especially where former political prisoners were concerned, while political refugees or involuntary exiles like Abraham Serfaty were unable to return to their country. The situation of impunity which still shielded the perpetrators of torture or other cruel, inhuman or degrading treatment, sometimes with fatal consequences, created a climate of fear throughout Moroccan society, and had as an additionally distressing result the impossibility for victims to be officially recognized as such and themselves or their relatives compensated for their suffering. All those circumstances constituted a serious impediment to the creation of a state of law where Morocco's commitment to the international human rights instruments it had signed would be fully respected.

46. Ms. BARNES DE CARLOTTO (International Movement for Fraternal Union among Races and Peoples), speaking also as the President of the Asociación Abuelas de Plaza de Mayo (Grandmothers of the Plaza de Mayo), spoke of the hundreds of children who had been abducted or had disappeared in Argentina during the military regime between 1976 and 1983. The impunity which still existed with regard to criminal acts at that time, including the abduction of children, was among the factors seriously impeding the country's return to true democracy.

47. In July 1992, the Grandmothers had been received in audience by the President of the Republic, Dr. Carlos Saúl Menen, and representatives of the Ministry of the Interior, and had called for a series of urgent measures to locate the children who had disappeared, establish their true and legal identity, and reunite them with their families. The fact that the proposals had all been approved demonstrated goodwill on the part of the President; a National Commission for the Right to Identity had been set up within the country's judicial framework and would - it was to be hoped - transform that goodwill into practical action to elucidate and where possible remedy without delay the tragic circumstances into which the children - now adolescents - had fallen. Unhappily, experience had taught the Grandmothers that even when abducted children had been located in Argentina or elsewhere and had been

positively identified - there were to date 54 such cases - the legal machinery for restoring them to their families was painfully slow to operate, if not actually deficient in terms of Argentina's domestic and international commitments alike. She cited three specific cases in that connection.

48. Disappearances in general, and disappearances of children in particular were very much still a topical issue. She urged the Commission: to remind the Argentine Government of its responsibilities with regard to the international instruments it had signed; more specifically, to seek the collaboration of the Government of Paraguay in resolving one of the cases to which she had referred; and, above all, to recognize that not only the Grandmothers of the Plaza de Mayo, but people everywhere had a responsibility to join in seeking to liberate the young people who had disappeared but who were still alive - the Desaparecidos con Vida - from their captors, and to reunite them with their natural relatives.

49. Ms. GUZMAN (Latin American Federation of Associations of Relatives of Disappeared Detainees) welcomed as a significant moral, if not mandatory commitment the Declaration on Protection of All Persons from Enforced Disappearance approved by the General Assembly, but expressed grief at the number of new cases brought to light in the latest report of the Working Group as well as the increase of from 47 to 58 in the number of incriminated countries, and at the persistence of impunity as a shield protecting those responsible for disappearances.

50. She called on the Commission to address the following issues in particular: the question of elaborating without further delay a draft Convention on Enforced Disappearances; more vigorous action to combat impunity by locating disappeared persons and bring those responsible to justice; the special case of disappeared children, especially in Central and Latin America; and the strengthening of the means enabling the Working Group on Enforced or Involuntary Disappearances to carry out its task.

51. In recent years, it had been suggested to those engaged in the quest for truth and justice in the matter of disappearances, and to the families of the disappeared, especially in Latin America, that with the return of democratic government, pacification and reconciliation, their concerns were somehow losing their topicality. She herself would emphatically respond that there could be no true pacification or reconciliation as long as an important piece of history and a crime against humanity were glossed over or nudged into oblivion.

52. Ms. SCACCHERI (Latin American Federation of Associations of Relatives of Disappeared Detainees) said that she had been born in 1977 and separated from her parents at the age of two months by what she described as "State terrorism"; she recounted her suffering, her restitution to her family, and her rehabilitation. Pleading for renewed attention to the plight of children like herself who had been identified but not yet reunited with their true relatives, as well as those whose whereabouts were still unknown, she read out to the Commission a poem which she had written to commemorate the rescue of innocents and the rediscovery of truth.

53. Mr. AHMAD (World Muslim Congress), speaking on agenda item 10 (a), said that on 6 January 1993, Indian troops had surrounded the town of Sopore in the Kashmir Valley, opening fire on people in an open-air market and setting fire to market stalls and shops. In the ensuing blaze, five residential neighbourhoods had been gutted. In accordance with standard practice, a senior spokesman for the Government of India had first denied that a massacre had taken place, and had subsequently claimed that the deaths had occurred during an exchange of fire between Government and opposition armed forces. According to the same official account, the fires had been caused by the igniting of illegally stored explosives. The following day, in the face of overwhelming evidence, the authorities had been obliged to admit that the official account of the incident was blatantly false, and that the security forces had in fact run amok.

54. The Kashmir Valley had been declared a "disturbed area" and sealed off by the occupying Power. With the imposition of 24-hour curfews, the entire population was effectively under detention. Nothing was being done to curb the widespread abuses of power by the security and armed forces. While the Indian Government continued to deny that human rights violations were taking place in Kashmir, local human rights organizations had gathered overwhelming evidence of illegal detention, violation of individual and collective rights, and of the infliction of the most barbarous and brutal torture and mutilation. Some detainees had apparently been compelled to participate in Hindu religious rites. Conservative estimates put the number of persons detained without trial at over 20,000. According to doctors at the Institute of Medical Sciences, Kashmir, between 500 and 1,000 detainees had died as a result of torture. Five doctors and two nurses had themselves been arrested and detained.

55. Attempts by lawyers to secure the freedom of detainees through the courts had been thwarted. In August 1992, 9,000 bail applications and 5,000 writs for habeas corpus had been before the courts; yet all those released as a result of those applications had since been re-arrested. Under the terms of the Act declaring the Kashmir Valley a disturbed area, only a specially designated court was empowered to grant bail; and no such court existed in the Kashmir Valley. Furthermore, judges whose rulings went against the Government were invariably transferred to other areas.

56. From the foregoing it was clear that the rights set forth in articles 3, 5 and 8 of the Universal Declaration of Human Rights and in article 10 (1) of the International Covenant on Civil and Political Rights were routinely violated on a large scale in Kashmir, and that the Indian Government systematically denied the existence of such violations. Clearly, no remedial measures could be taken by the authorities until the existence of the violations was admitted. His organization thus appealed to the Commission to secure free access to the Kashmir Valley for all human rights organizations; to determine for itself the extent of those violations; and to take steps to ensure that they were halted forthwith and that those responsible were brought to justice.

57. Ms. BAUER (Article 19: International Centre Against Censorship) welcomed the recommendation made in the final report by Mr. Türk and Mr. Joinet on the right to freedom of opinion and expression and contained in

document E/CN.4/Sub.2/1992/9/Add.1, that the Sub-Commission should explore the elaboration of more precise standards or principles concerning the right to freedom of opinion, expression and information. The development of such principles and standards would be of particular value in situations such as that in Sri Lanka, where abductions, disappearances and killings of individuals, including journalists and other media personnel, continued to take place with impunity. On 10 December 1992, a peaceful demonstration in Colombo marking Human Rights Day had been broken up by police, who had attacked demonstrators and journalists covering the event, as well as two opposition members of Parliament, the Joint Secretaries of the Parliamentarians' Committee for Human Rights. Opposition politicians had been attacked at a number of other meetings and events held during 1992. In the same period, 3,000 people were reported to have disappeared in the east of the country in the escalating war between Government forces and the Liberation Tigers of Tamil Eelam (LTTE). A further 2,000 civilians were held by LTTE in the north of the country. Many had been detained, tortured or killed solely for having peacefully expressed opinions contrary to those of LTTE.

58. Freedom of the press also continued to be severely curtailed throughout Sri Lanka. In the past year, editors and publishers of independent newspapers had been charged under the Emergency Regulations with attempting to create dissension or disaffection, and with bringing the Government of Sri Lanka into hatred and contempt. On a number of occasions in 1992, parliamentary privilege had been invoked in order to censor sections of the press critical of the Government, effectively muzzling free discussion of contentious issues. Actions including visits to independent newspaper offices and printing houses by personnel from the Inland Revenue Department early in 1993 appeared to be deliberate and systematic attempts to use government institutions to interfere with the activities of the independent press and their printers.

59. Her organization was deeply concerned that the Sri Lankan Government had failed to take adequate action to investigate the attacks on journalists and to prosecute those responsible, and that it had not taken positive action to ensure that the independent press should be allowed to operate without harassment. The situation in Sri Lanka, which was replicated in dozens of other countries, highlighted the urgent need to set more precise standards establishing those rights to freedom of expression from which no derogations were permissible.

60. In conclusion, her organization called upon the Commission to support the aforementioned recommendation contained in the Türk/Joinet report and further called upon it to take note of the serious violations of human rights committed by the Government of Sri Lanka.

61. Mr. SAMOURA (World Social Prospects Association), speaking on agenda item 10 (a), said that, in defiance of their international obligations, many African regimes continued to practise repression and physical and psychological torture.

62. In Rwanda, encouraged by international indifference and backed by foreign arms dealers, the Government of Juvénal Habyarimana was waging a genocidal war, exploiting the rivalry between Hutu and Tutsi - ethnic groups with a shared social history, national identity and black-African culture - and

rejecting alternation as a fundamental principle of democracy. Yet both communities had the same aspirations: social peace and the right to coexist in the land of their ancestors.

63. In neighbouring Zaire, where torture and repression had been common practice since 1963, Marshal Mobutu continued to enjoy the total impunity commonly extended to African dictators by the international community. No concrete action was being taken to restore fundamental rights to the people of Zaire; and all the evidence suggested that the interests of local and international financial groups would take precedence over the interests of Zaire's 35 million inhabitants, and that detention and torture would further intensify until, following a tradition that was now well established, Marshal Mobutu finally went into exile. The Commission and other organs of the United Nations system must take urgent action to speed up the process of democratization, by sending representatives to inquire into cases of torture, rape and genocide affecting entire populations.

64. His organization was deeply concerned at the fate of the 18 Tunisian intellectuals arrested on 2 February 1993 for setting up a national committee in support of prisoners of opinion. Although the activists had since been released, the arrests gave a clear indication of the poor state of human rights in Tunisia. His organization's representative, who had been due to address the Commission at its current session, had since been rearrested, while his wife and daughter had been terrorized by police in their home. The Commission should use its influence to ensure that fundamental rights were respected in Tunisia.

65. On behalf of thousands of victims of torture and repression in Africa, his organization welcomed the forthcoming adoption by the Security Council of a resolution setting up an international tribunal to try crimes against humanity and war crimes in the former Yugoslavia. However, the competence of that court should be extended to other areas of the globe, such as Africa, where dictatorships starved their peoples before committing genocide against them in total impunity. The peoples of Africa were turning to the Commission in their hour of need.

66. Mr. FORBES (War Amputations of Canada) said that in May 1987, in accordance with the procedure established under Economic and Social Council resolution 1503 (XLVIII), his organization had submitted the first of a number of formal claims to the Commission on Human Rights concerning the gross violations of human rights committed by Japan against Canadian servicemen held as prisoners of war during World War II. Subsequently, additional claims had been submitted by organizations representing over 200,000 former prisoners of war and civilian internees or their widows, on behalf of counterpart organizations in Great Britain, the United States, Netherlands, New Zealand and Australia.

67. The extent of the atrocities and hardship imposed on the individuals concerned was made clear in the Judgement of the International Military Tribunal for the Far East, delivered in November 1948. A comparison of the number of deaths of prisoners of war in the European and Pacific theatres revealed that, whereas in the latter 27 per cent of the prisoners taken by

the Japanese from the United States and the United Kingdom forces had died in captivity, only 4 per cent of the same forces taken prisoner by the German and Italian armies had perished in captivity.

68. The Japanese Government had consistently taken the position that any compensation to be paid had been provided for in the Peace Treaty entered into by Japan and the Allied Powers on 8 September 1951 and ratified on 28 April 1952. It was his organization's understanding that that position was the only defence formally filed by the Japanese in response to the numerous communications it had lodged with the United Nations. It was his organization's contention that the individual human rights of Allied prisoners of war and civilian internees were not affected by the Peace Treaty, on the basis that the representatives of the Governments signing the Treaty had no legal authority or mandate to relinquish those basic rights. Moreover, since the fundamental human rights of the individuals filing the claims did not fall under the jurisdiction of Governments, their claim was not affected by the provisions of the Peace Treaty.

69. His organization had deposited extensive material with the Commission outlining the record of the Federal Republic of Germany in relation to the payment of parallel reparations. By 31 December 1986 the Federal Republic of Germany and the individual German Länder had paid more than DM 78 billion in restitution to victims of the National Socialist regime, and it was anticipated that, by the end of the century, that amount would have exceeded DM 100 billion. The Federal Republic had thus established a precedent, and German legislation had gone far beyond the extent of its original responsibility. Indeed, when West and East Germany had amalgamated, the Federal Government had expanded its programme of compensation to include many victims who resided in the Eastern bloc countries. Given that record of German reparation payments, it was wholly untenable for the Japanese to suggest that they did not bear a similar responsibility under international law. His organization therefore requested the Commission on Human Rights to note the precedent thus established.

70. It was generally recognized that Japan strongly desired to play on the international stage a role more commensurate with its economic and financial stature, and that it wished to be designated a permanent member of the United Nations Security Council in furtherance of that objective. To do so, it must first fulfil its obligations arising from the appalling human rights violations committed during the Second World War.

71. It was therefore incumbent on the Commission to exercise its mandated authority by affirming specifically that the treatment by the Japanese authorities of Allied prisoners and war and civilian internees during the Second World War revealed a consistent pattern of gross violations of human rights. Further, the Commission should strongly urge the Japanese Government to establish an international compensation fund for the purpose of indemnifying the victims of those violations. Such a fund should be administered either by the United Nations or by an international agency such as the International Committee of the Red Cross.

72. Mr. HUMPHREY (War Amputations of Canada) said that the procedure established under Economic and Social Council resolution 1503 (XLVIII) did not preclude the Commission's attention being drawn to situations resulting from the Second World War. The Sub-Commission on the Prevention of Discrimination and Protection of Minorities, of which he was a former Chairman, had misinterpreted the resolution in that regard. It should be borne in mind that the Second World War had itself been the catalyst for the existence of the Sub-Commission and the Commission itself, and that the treatment referred to by the previous speaker clearly fell within the latter's terms of reference: the principle of consistency must be upheld. It should also be pointed out the defence usually offered by the Japanese Government regarding compensation was clearly incompatible with the overriding principle of jus cogens, in that Governments were not entitled to negate human rights by invoking treaty obligations, such as those under the 1952 Peace Treaty.

73. In conclusion, he said that the victims of Japanese ill-treatment in the Second World War were seeking a clear statement from the Commission that the Japanese authorities had been guilty of gross violations of human rights; their claims for compensation would be pursued through other channels. His observations were no way intended to be construed as anti-Japanese, but he believed that the image of Japan in the international community would suffer if its Government did not accept responsibility for the misdeeds of its predecessors.

74. Mr. HUSSAIN (Pakistan) said that the judiciary was an important vehicle for preserving and promoting human rights, and that the higher judiciary in Pakistan, and particularly the Supreme Court and the High Courts, had taken some important initiatives in that regard. The socio-legal context was also of great importance in a country with a population which was predominantly rural and which suffered from a low level of literacy and, consequently, needed greater awareness of its fundamental rights. In that regard, the Pakistani judiciary had relied extensively on reports in the national press and the efforts of human rights activists and non-governmental organizations in highlighting cases involving human rights abuses.

75. The Pakistani judiciary had taken three specific initiatives regarding human rights in the previous two years. Firstly, it had announced a scheme for the protection of human rights of all classes of society in Pakistan, with the aim of ascertaining, promoting and enforcing the legal rights of citizens under Islam, the Constitution and the law. The scheme was particularly directed towards the poor and deprived classes of society, in other words, those sections of society whose access to the courts was often limited due to lack of knowledge of their fundamental rights and lack of funds. The scheme was also aimed at providing an alternative machinery for settling disputes at grass-roots level for those who, more often than not, were outside the framework of the traditional legal system. The second aspect of the new scheme was the establishment of a Central Council for Awareness and Enforcement of Human Rights and Obligations, whose primary purpose would be to implement the scheme at central, provincial, district and ward level, the latter being the basic electoral unit in both urban and rural areas. All four tiers involved representation by members of the judiciary and

locally-elected heads of the Bar Association, police and administrative personnel, non-governmental organizations, and representatives of the press, minorities, labour and women.

76. The initiative of the judiciary also entailed what was termed "public interest litigation". Over 600 such cases had been processed by the Supreme Court in 1992 alone, including offences against women, the fundamental rights of children, gender-based discrimination against working women, prison reform, the rights of minorities, the treatment of mineworkers and cases of environmental pollution. The higher judiciary had also been working to clear a backlog of pending litigation, and had succeeded in processing 28,000 cases in the previous year, thus avoiding inordinate delays in the administration of justice.

77. The Chief Justice of Pakistan had recently proposed the establishment of a Ministry of Human Rights to devote exclusive attention to human rights cases. The judiciary had also been encouraging lawyers to take up human rights cases on their own initiative, without payment, so that the rights of the poor and deprived sectors of society could be protected through easier access to the courts.

78. Mr. RAMISHVILI (Russian Federation) said that the treatment of detainees and prisoners was one of the fundamental indicators of a mature and civilized society. Unfortunately, for almost 70 years his country's attitude to its people had been distinguished by its cruelty, and the correctional system which had evolved in the 1920s and 1930s was proving extremely difficult to reform, partly because there was a public demand for stiffer penalties in response to rising crime. Changes in attitude could come about only in the longer term.

79. It was not only in the Russian Federation, however, that the situation was less than satisfactory, and the outbreaks of strife and the consequent massive and flagrant violations of human rights in Europe were of particular concern to the Commission and its special rapporteurs, to whom all States, including those newly-formed, should extend maximum cooperation.

80. For its part, the Russian Federation would make every effort to ensure that such important international instruments as the Code of Conduct for Law Enforcement Officials and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment were fully incorporated in its domestic legislation. In view of the regrettable fact that international standards were not automatically binding in national law, the time had perhaps come to implement the Commission's monitoring function in respect of the rights of prisoners and detainees.

81. In his own country, the key problem was judicial reform, and it was with that aim in view that an experiment had been undertaken in a number of regions of the Russian Federation to introduce, or rather restore, the institution of juries. In addition, the Russian Parliament had recently promulgated a number of enactments aimed at enhancing respect for human rights, including provisions on the procedures for arrest and pre-trial detention which were

in keeping with the Convention on Civil and Political Rights. Under the terms of the latter, an arrested person had the right to demand a judicial review of the grounds and legality of their arrest.

82. There were also problems regarding the implementation of existing legislation and administrative procedures, the main obstacle being the extremely difficult economic situation, which also had its impact on the situation of detainees and prisoners. Available accommodation for the prison population, for example, was extremely restricted.

83. His delegation welcomed the fact that work had begun on a draft optional protocol to the Convention against Torture, but it was a matter for disquiet that not all delegations were sufficiently concerned to ensure that the relevant Working Group fulfilled its task effectively and fruitfully.

84. Mr. CASTELLANOS (Cuba), speaking in exercise of the right of reply, said that the representative of Amnesty International, referring to the question of human rights in the administration of justice, had chosen to focus selectively on arbitrary detention in seven countries, including Cuba, all of which belonged to the South, omitting all mention of the developed countries of Europe or North America. It seemed paradoxical that a non-governmental organization should restrict its condemnation to a small number of countries in the third world. If Amnesty International was to live up to its reputation as an impartial non-governmental organization, it should also extend its concern to the victims of human rights violations in the developed countries.

The meeting rose at 10.05 p.m.